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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/669,861	09/26/2000	DARRYL BLACK	102689-58	5127
21125	7590	03/25/2004	EXAMINER	
NUTTER MCCLENNEN & FISH LLP WORLD TRADE CENTER WEST 155 SEAPORT BOULEVARD BOSTON, MA 02210-2604			NAJJAR, SALEH	
		ART-UNIT	PAPER NUMBER	
		2157		
DATE MAILED: 03/25/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/669,861	BLACK ET AL.
	Examiner Saleh Najjar	Art Unit 2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 26 September 2000.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-14 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,2 and 7-14 is/are rejected.  
 7) Claim(s) 3-6 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 26 September 2000 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

1. This action is responsive to the application filed on September 26, 2000. Claims 1-14 are pending. Claims 1-14 represent a method for tracking distributed data retrieval in a network device.
  
2. The information disclosure statement filed December 18, 2000 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

The IDS states that the references were cited in another application No. 09/633,675, but no copies of the references were present in that application.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:  
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-2, and 7-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fletcher et al., U.S. Patent No. 6,108,782.

Fletcher teaches the invention as claimed including a system and method for distributed remote monitoring for networks (see abstract).

As to claim 1, Fletcher teaches method of tracking distributed statistical data retrieval in a network device including a plurality of cards each executing at least one statistical data gathering process (see figs. 1-9; col. 8, lines 30-35; col. 15, Fletcher discloses agents running on interface cards for gathering network statistical data for MIB variables requested), comprising:

a. registering with a central process a MIB identifier corresponding to each type of statistical data to be gathered by each statistical data gathering process (see col. 11, Fletcher discloses that a discovery is sent from agents to register for MIB variable to be collected by a collector);

b. establishing at the central process a file for each different MIB identifier, wherein each file includes a process identification corresponding to each statistical data gathering process that registered the corresponding MIB identifier (see col. 15-18, Fletcher discloses that simple files at the collectors are kept for collecting statistics gathered from agents);

c. gathering statistical data through each of the statistical data gathering processes, wherein each of the gathered statistical data corresponds to one of the MIB identifiers registered with the central process (see figs. 3-9; col. 15-18);

d. sending the gathered statistical data and corresponding MIB identifier from each statistical data gathering process to the central process (see col. 15-18, Fletcher discloses that the agents transmit statistical data to collectors corresponding to MIB defined variables);

e. combining received statistical data corresponding to each data type identifier into a common data file corresponding to each MIB identifier (see col. 17-18, Fletcher discloses that simple files are updated continuously at the collector by the statistical data sent by the agents);

f. closing the common data file for each MIB identifier when each statistical data gathering process in the list corresponding to each data type identifier has sent statistical data corresponding to the data type identifier (see col. 18-20, Fletcher discloses that files are compiled for each statistical data gathered and sent to a workstation for viewing); and

g. repeating steps c. through f. periodically (see col. 15-20, Fletcher discloses that simple text files are continuously updated according to dRMON protocol).

Fletcher does not explicitly teach the limitation of a data type. Fletcher does teach that MIB variables representing network statistics are gathered from agents running on adaptor cards (see col. 15-18).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Fletcher by specifying the MIB variables as "data type" since the same functionality of identifying a type of statistical data is achieved.

As to claim 2, Fletcher teaches the method of claim 1, wherein the data type identifier is a string name (see col. 15-18).

As to claim 7, Fletcher teaches the method of claim 1, further comprising:

adding a card including at least one statistical data gathering process to the network device (see col. 6-15, Fletcher discloses adding a adapter card and an agent to an existing end station for transparently monitoring of statistical data);

registering with the central process a MIB identifier corresponding to each type of statistical data to be gathered by the newly added statistical data gathering process (see col. 6-15, Fletcher discloses that agents go through a discovery process for registry into RMON MIB);

adding at the central process a MIB identification corresponding to the newly added statistical data gathering process to any of the existing lists which correspond to any of the MIB identifiers registered by the newly added statistical data gathering process (see col. 8-15, Fletcher discloses that agents are installed at the adapter for gathering different MIB variables);

establishing at the central process a new file for each different MIB identifier registered by the newly added statistical data gathering process and not corresponding to any of the existing lists (see col. 15-18); and

wherein repeating steps c. through f. periodically includes the newly added statistical data gathering process (see col. 15-18).

As to claim 8, Fletcher teaches the method of claim 1, wherein each of the statistical data gathering processes may be configured to gather statistical data and wherein gathering statistical data through each of the statistical data gathering processes comprises:

gathering statistical data through each statistical data gathering process configured to provide statistical data (see col. 15-18).

As to claim 9, Fletcher teaches the method of claim 8, wherein each statistical data gathering process may manage a plurality of interfaces, and wherein gathering statistical data through each of the statistical data gathering processes comprises:

gathering statistical data from each interface; and combining statistical data corresponding to the same MIB identifier (see col. 15-18).

As to claim 10, Fletcher teaches the method of claim 9, wherein each of the plurality of interfaces may be configured to gather statistical data corresponding to particular MIB identifiers and wherein gathering statistical data from each interface comprises:

gathering statistical data from each interface configured to provide statistical data (see col. 15-18).

As to claim 11, Fletcher teaches the method of claim 1, wherein gathering statistical data through each of the statistical data gathering processes, comprises:

gathering a current statistical data sample periodically at a first period through each of the statistical data gathering processes (see col. 8-15, Fletcher discloses that statistical data is gathered periodically).

As to claim 12, Fletcher teaches the method of claim 11, wherein gathering statistical data through each of the statistical data gathering processes further comprises:

adding the current statistical data sample to a data summary each time the current statistical data sample is gathered through each of the statistical data gathering processes (see col. 8-15).

As to claim 13, Fletcher teaches the method of claim 12, wherein sending the gathered statistical data and corresponding MIB identifier from each statistical data gathering process to the central process comprises:

sending the current statistical data sample periodically at a first period; and sending the data summary periodically at a second period (see col. 8-20).

As to claim 14, Fletcher teaches the method of claim 13, wherein, in normal operation, the second period is longer than the first period (see col. 15-20).

5. Claims 3-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record does not teach or suggest the claimed limitation of starting a timer for each common data file; i. detecting an expiration of one of the timers corresponding to one of the common data file if at least one of the data gathering processes in the list corresponding to the common data file does not send its gathered statistical data; j. closing the common data file; k. incrementing a count corresponding to the common data file and the statistical data gathering process that did not send its gathered statistical data; l. determining whether the count exceeds a predetermined threshold; m. deleting the statistical data gathering process that did not send its gathered statistical data from the list corresponding to the common data file if the count exceeds the predetermined threshold; and wherein repeating steps c. through f. periodically further comprises repeating steps h. through m. periodically as in claims 3-6.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saleh Najjar whose telephone number is (703) 308-7613. The examiner can normally be reached on Monday-Friday from 6:30 to 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Ario Etienne*, can be reached on (703) 308-7562.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600. The central official fax number for the group is (703) 872-9306.



Saleh Najjar

Primary Examiner / Art Unit 2157